

IN THE
Supreme Court of the United States

Supreme Court, U. S.
FILED

MAY 22 1978

MICHAEL ROBAK, JR., CLERK

October Term 1977
No. 8, Original of
October Term 1965

STATE OF ARIZONA,

Complainant,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CITY OF SAN DIEGO, and COUNTY OF SAN DIEGO,

Defendants,

UNITED STATES OF AMERICA and STATE OF NEVADA,

Interveners,

STATE OF NEW MEXICO and STATE OF UTAH,

Impleaded Defendants.

Response of the States of Arizona, California, and Nevada and the Other California Defendants to the Petition of Intervention and Brief in Support Thereof on Behalf of the Fort Mojave Tribe, the Quechan Tribe of the Fort Yuma Indian Reservation, the Chemehuevi Indian Tribe, the Colorado River Indian Tribes and the Confederation of Indian Tribes of the Colorado River and Joined by the National Congress of American Indians as Amicus Curiae.

(see list of attorneys on next page)

May 22, 1978

For the State of Arizona
RALPH E. HUNSAKER
Chief Counsel
Arizona Water Commission
222 North Central Avenue
Suite 800
Phoenix, Arizona 85004
(602) 263-3888

For the State of California
EVELLE J. YOUNGER
Attorney General
Tishman Building
3580 Wilshire Boulevard
Los Angeles, California 90010
(213) 736-2304

SANFORD N. GRUSKIN
Chief Assistant Attorney
General

R. H. CONNETT
N. GREGORY TAYLOR
Assistant Attorneys General

EDWIN J. DUBIEL
DOUGLAS B. NOBLE
EMIL STIPANOVICH, JR.
ANITA E. RUUD

Deputy Attorneys General
Tishman Building
3580 Wilshire Boulevard
Los Angeles, California 90010
(213) 736-2304

For Palo Verde Irrigation District
ROY H. MANN
Counsel

**CLAYSON, ROTHROCK
& MANN**
601 South Main Street
P.O. Box 670
Corona, California 91720
(714) 737-1910

For the Coachella Valley County
Water District
MAURICE C. SHERRILL
General Counsel

REDWINE & SHERRILL
Suite 1020
3737 Main Street
Riverside, California 92501
(714) 684-2520

For the Imperial Irrigation
District

R. L. KNOX, JR.
Chief Counsel
**HORTON, KNOX, CARTER
& FOOTE**
Suite 101, Law Building
895 Broadway
El Centro, California 92243
(714) 352-2821

For Metropolitan Water District
of Southern California

ROBERT P. WILL
General Counsel
RICHARD PAUL GERBER
Deputy General Counsel
P.O. Box 54153
Terminal Annex
Los Angeles, California 90054
(213) 626-4282

For the City of Los Angeles

BURT PINES
City Attorney
EDWARD C. FARRELL
Chief Assistant City Attorney
for Water and Power

KENNETH W. DOWNEY
Assistant City Attorney

GILBERT W. LEE
Deputy City Attorney
Department of Water & Power
111 North Hope Street
P.O. Box 111
Los Angeles, California 90051
(213) 481-3296

For the City of San Diego

JOHN W. WITT

City Attorney

C. M. FITZPATRICK

Senior Chief Deputy

City Attorney

202 C Street

Mail Station 3A

San Diego, California 92101

(714) 236-6220

For the County of San Diego

DONALD L. CLARK

County Counsel

JOSEPH KASE, JR.

Assistant County Counsel

LLOYD M. HARMON, JR.

Deputy County Counsel

1600 Pacific Highway,

Room 355

San Diego, California 92101

(714) 236-3991

For the State of Nevada

ROBERT LIST

Attorney General

LYLE RIVERA

Chief Deputy Attorney General

BRIAN MC KAY

Deputy Attorney General

State of Nevada

Mail Room Complex

Las Vegas, Nevada 89158

(702) 384-2751

THOMAS G. NELSON

Special Counsel to State of
Nevada, Division of Colorado

River Resources

PARRY, ROBERTSON,

DALY & LARSON

P.O. Box 525

Twin Falls, Idaho 83301

(208) 733-3722



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Response of the States of Arizona, California, and Nevada and the Other California Defendants to the Petition of Intervention and Brief in Support Thereof on Behalf of the Fort Mojave Tribe, the Quechan Tribe of the Fort Yuma Indian Reservation, the Chemehuevi Indian Tribe, the Colorado River Indian Tribes and the Confederation of Indian Tribes of the Colorado River and Joined by the National Congress of American Indians as Amicus Curiae.

STATE OF ARIZONA, Complainant, the California Defendants (STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CITY OF SAN DIEGO, COUNTY OF SAN DIEGO) and STATE OF NEVADA, Intervener (hereinafter referred to collectively as the "State parties"), hereby oppose the Petition of Intervention on Behalf of the Fort Mojave Indian Tribe, the Chemehuevi Indian Tribe, the Quechan Tribe of the Fort Yuma Indian Reservation, the Colorado River Indian Tribes, and the Confederation of Indian Tribes of the Colorado River, (hereinafter referred to as the "applicant Indian Tribes" or "applicants") and joined in by the National Congress of American Indians as Amicus Curiae. The State parties contend that the Petition of Intervention should be denied and that proceedings toward carrying out this Court's mandate under Article VI of the 1964 Decree in this matter should be allowed to continue between the existing parties.

ARGUMENT

The Petition of Intervention and Brief in Support are no more than a rehash of the Motion for Leave to Intervene as Indispensable Parties filed by largely the same group of applicants on December 23, 1977. The State parties opposed that motion in a Response dated January 25, 1978, and hereby incorporate by reference that response in its entirety as an answer to the Petition of Intervention and Brief in Support.

Nothing the applicants have alleged or argued in the present Petition in any way refutes the arguments already made by the State parties in opposing intervention, namely: (1) a grant of intervention would authorize a suit against the States of Arizona, California, and Nevada without their consent; and (2) neither the requirements for intervention as a matter of right nor for permissive intervention have been met.

The matter currently before the Court is the determination of present perfected rights under Article VI of the Court's 1964 Decree. As we have argued several times before, Article VI is not the proper vehicle for asserting additional Indian water rights claims above those already quantified in the Decree. Two other articles of the Decree, II(D)(5) and IX, are available for this purpose, and nothing proposed by the State parties under Article VI would preclude that availability. Furthermore, subordination language now agreed upon by the United States as well as the State Parties will protect Indian water rights against even the possi-

bility of prejudice by allegedly spurious water rights of major non-Indian claimants.

The applicants' only answer is to repeat their complaints about United States representation and their unlitigated claims, and then to blindly assert that the subordination language agreed upon by the United States for the protection of *their* water rights is meaningless because of ambiguities. As the State parties have argued in their earlier Response, the allegation of ambiguity is a sham. The fact that such an allegation is repeated, without support, in the present Petition indicates the disingenuousness of applicants' argument. Determined to prove that the United States has inadequately represented them, the applicants are apparently compelled to deny the obvious, namely that the United States managed to negotiate language very favorable to them in proceedings under an Article VI that is not even designed to address Indian claims. The fact is that the Indian Tribes will not be hurt, but only helped, by the Joint Motion for Entry of a Supplemental Decree which the United States and the States parties are just about to file under Article VI.

The Colorado River Indian Tribes and the Cocopah Indian Tribe have recognized this fact that the present applicants deny. In a motion dated April 10, 1978, they have moved to intervene not under Article VI, but rather under Articles II(D)(5) and/or IX, for purposes of asserting additional water rights claims. Furthermore, they approve and request entry of a Supplemental Decree under Article VI containing language

now agreed upon by the United States and the State parties. This is particularly significant because the Colorado River Indian Tribes have almost three-quarters of the total water rights quantified for Indian Tribes in the Court's Decree, and they are apparently satisfied that they are not being prejudiced by any of the proceedings under Article VI.¹

In sum, the State parties wholly reject the attempt by applicants to force their way into the final stages of implementing the Court's mandate under Article VI. All the parties to this lawsuit are now prepared to finally conclude fourteen years of work toward this end. Intervention by applicants would only destroy this work and could only be done under the guise of protecting rights already protected and/or litigating additional claims that should be and can effectively be litigated in proceedings under other articles of the Court's Decree.

¹It should be noted that the present Petition of Intervention filed by Raymond Simpson also lists the Colorado River Indian Tribes as a moving party. However, at a public meeting of the Colorado River Board of California, held April 19, 1978 in Los Angeles, Mr. Franklin McCabe, Jr., Chairman, Tribal Council, of the Colorado River Indian Tribes, stated that the Colorado River Indian Tribes had not joined in the motion made by Mr. Simpson's clients and had instructed him to remove their name from his pleadings. Mr. McCabe has since confirmed this in a letter to the Clerk of the Court, dated May 10, 1978.

Conclusion

For these reasons, as more completely detailed in the Response of the State parties dated January 25, 1978, the State parties urge that the Petition of Intervention and all relief prayed for therein be denied and that the existing parties be allowed to proceed to implement the mandate of Article VI.

Respectfully submitted,

State of California,

EVELLE J. YOUNGER,
Attorney General,

SANFORD N. GRUSKIN,
Chief Assistant Attorney General,

R. H. CONNETT,

N. GREGORY TAYLOR,
Assistant Attorneys General,

EDWIN J. DUBIEL,

DOUGLAS B. NOBLE,

EMIL STIPANOVICH, JR.,

ANITA E. RUUD,
Deputy Attorneys General,

By DOUGLAS B. NOBLE,

State of Arizona,

RALPH E. HUNSAKER,
Chief Counsel,

Arizona Water Commission,

Palo Verde Irrigation District,

ROY H. MANN,
Counsel,

CLAYSON, ROTHROCK & MANN,

Coachella Valley County Water District,

MAURICE C. SHERRILL,

General Counsel,

REDWINE & SHERRILL,

Imperial Irrigation District,

R. L. KNOX, JR.,

Chief Counsel,

HORTON, KNOX, CARTER & FOOTE,

The Metropolitan Water District of
Southern California,

ROBERT P. WILL,

General Counsel,

RICHARD PAUL GERBER,

Deputy General Counsel,

City of Los Angeles,

BURT PINES,

City Attorney,

EDWARD C. FARRELL,

*Chief Assistant City Attorney,
for Water and Power,*

KENNETH W. DOWNEY,

Assistant City Attorney,

GILBERT W. LEE,

Deputy City Attorney,

City of San Diego,

JOHN W. WITT,

City Attorney,

C. M. FITZPATRICK,

Senior Chief Deputy City Attorney,

County of San Diego,

DONALD L. CLARK,

County Counsel,

JOSEPH KASE, JR.,
Assistant County Counsel,

LLOYD M. HARMON, JR.,
Deputy County Counsel,

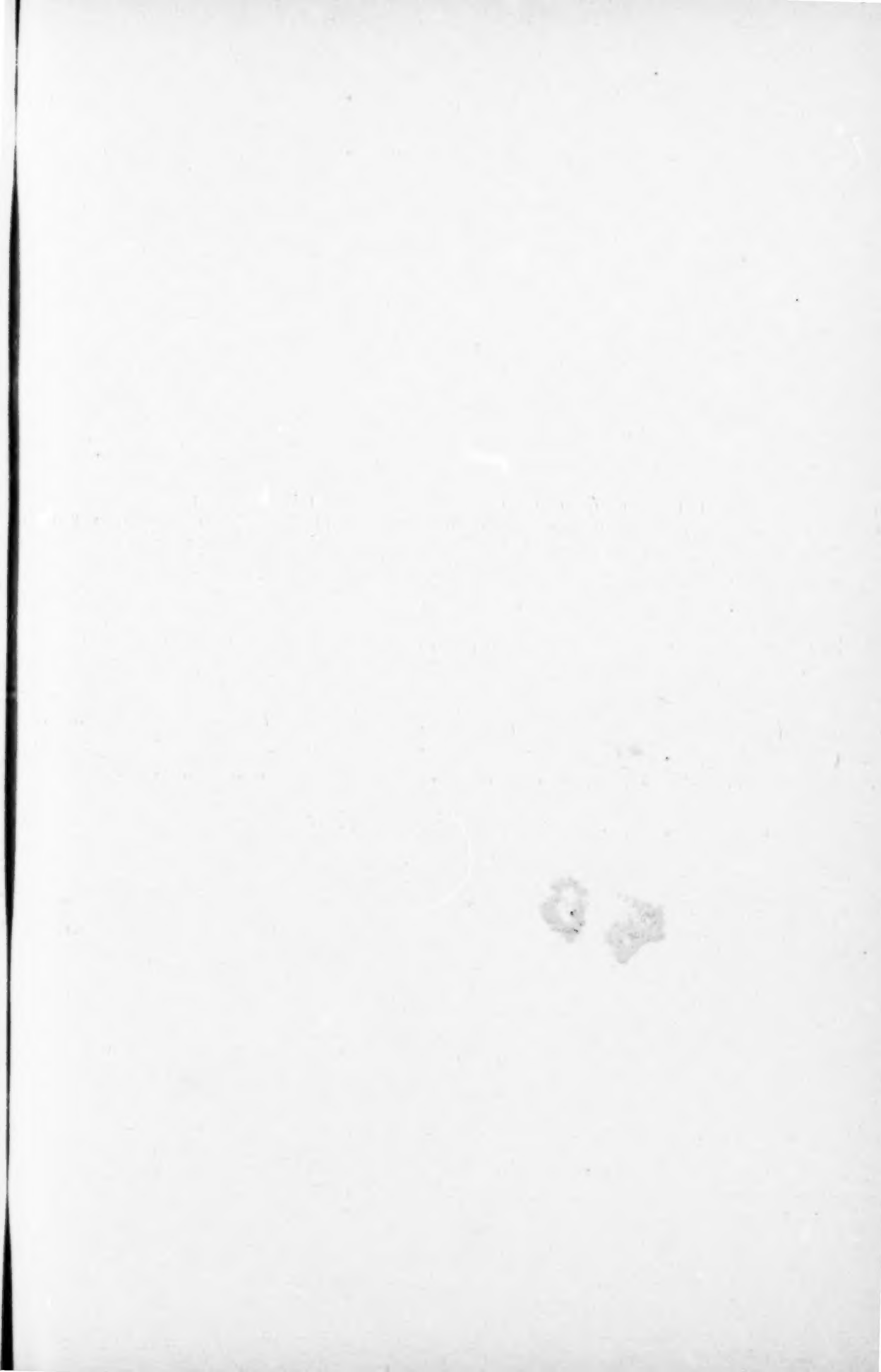
State of Nevada,

ROBERT LIST,
Attorney General,

LYLE RIVERA,
Chief Deputy Attorney General,

BRIAN MCKAY,
Deputy Attorney General,

By **DOUGLAS B. NOBLE.**



Service of the within and receipt of a copy
thereof is hereby admitted this day
of May, A.D. 1978.

